



**In The United States Patent and Trademark Office**

Appn. No. 09/939,865

Filed: August 27, 2001

Applicant: Reuben Hertz

Title: **HANDHELD APPARATUS FOR DELIVERY OF PARTICULATE  
MATTER WITH DIRECTIONAL FLOW CONTROL**

Examiner/GAU: Robert Rose / 3723

Official Fax Number: 703-305-3579

Tel: (703) 308-0163

**Affidavit: First to Invent under 37 C.F.R. 1.131**

Commissioner of Patents and Trademarks  
Patent and Trademark Office  
United States Department of Commerce  
P.O. Box 1450  
Alexandria, VA 22313-1450

**RECEIVED**  
JUL 08 2003  
TECHNOLOGY CENTER R3700

SIR:

The following must be provided to meet the requirements of date of inventorship under 37 C.F.R. 1.131:.

- 1) The referenced patent or publication is less than one year prior to the date on which the inventor's application was filed in this country.
- 2) The date of completion of the invention is after January 1, 1996.
- 3a) Establish reduction to practice prior to the effective date of the reference
- 3b) Conception, due diligence, and subsequent reduction to practice was initiated prior to the date of filing of the referenced application.
- 4) Exhibits must accompany the affidavit or in their absence satisfactorily explained.

Applicant believes the following remarks and exhibits support all four items required to determine date of inventorship and continued due diligence of the subject invention.

**Date of Application**

The application priority date respective to the new matter is the August 27, 2001 filing date of this application. The first publication of the referenced art is March 12, 2002. Applicant believes the application has satisfied the statutory limitations respective to item number 1.

### **Date of Inventorship**

All aspects of the apparatus, excluding the self sealing mechanism, was described within the parent application, now USPN 5,839,946, issued November 24, 1998, filed on August 21, 1995.

A second application, now USPN 6,287,180, issued September 11, 2001, was filed on November 21, 1998. The '180 patent is a continuation-in-part of U.S. patent application Ser. No. 08/517,379 filed Aug. 21, 1995 (status: issued Nov. 24, 1998 as U.S. Pat. No. 5,839,946), and claims benefit to U.S. Provisional Patent Application No. 60/073,824 filed Feb. 5, 1998; which is a continuation of PCT Patent Application No. PCT/US96/11696 filed Jul. 15, 1996 (status published as WO97/06924 Feb. 27, 1997)

The concept of the self sealing mechanism was conceived as a feature for the handheld apparatus for delivery of particulate matter prior to January of 1999.

The date is substantiated by a letter from Barry "Boaz" Groman to Patent Attorney Gerald Linden (Exhibit A). Mr. Groman was assisting Applicant with the reduction to practice as well as market roll out of the present invention. This is supported as Applicant was shown to be copied on the correspondence.

The January 24<sup>th</sup>, 1999 date can be substantiated by the copy of the check stub (Exhibit B).

### **Due Diligence & Reduction to Practice**

Applicant manufactured working particulate matter delivery apparatus's by modifying a standard syringe prior to April 10, 1999.

Applicant purchased several hemispherically shaped seals as well as several syringe bodies from a local medical supply store in March of 1999. Applicant used the purchased components to find where one of the hemispherically shaped seals fit within the barrel of one of the syringes. The hemispherically shaped seal was slit in an "X" pattern using an Exacto™ knife.

The unit was subsequently tested and found to be acceptable.

Applicant has submitted drawings illustrating the assembly process of the concept. The drawings submitted documented the process developed using the components identified above.

The manufacturing process provided herein illustrates the overall process of manufacturing the present invention of using a self-sealing mechanism positioned between the inlet gas port and the mixing chamber (Exhibit C).

An enlargement of the documented dates is provided supporting the reduction to practice date being on or before April 10, 1999.

### **Index of Exhibits**

**Exhibits A, B, C, D, and E provide evidentiary support the respective dates of conception, reduction to practice and due diligence and required under 37 C.F.R. 1.131.**

#### **Exhibit A**

Groman to Linden correspondence providing latest potential dates for conception of the present invention (January 24, 1999). Please reference paragraph three which clearly describes the subject invention as "Inlet seal is a semi-circle with a cut at the tip"

#### **Exhibit B**

Check stub respective to Check Number 1025 (Referenced within Exhibit A) supporting the date of the correspondence (January 24, 1999).

#### **Exhibit C**

Product Design and Manufacturing Process illustrating reduction to practice of the subject invention (April 10, 1999).

#### **Exhibit D**

An enlargement of the lower right corner of the Product Design and Manufacturing Process (Exhibit C) to more clearly illustrate the identified date of reduction to practice (April 10, 1999).

#### **Exhibit E**


A photograph of one of the several units illustrating actual reduction to practice.


**CONCLUSIONS**

Applicant believes the information herein substantiates the following:

- 1) The subject application was filed prior to the first anniversary of the publication of the referenced art.
- 2) The date of completion of the invention is after January 1, 1996.
- 3) The Applicant had conceived the new matter prior to the effective date of the referenced art. The Applicant applied due diligence between the date of conception and the subsequent reduction to practice.
- 4) Sufficient evidence has been provided to support the dates of conception, the dates of reduction to practice, and due diligence between.

The foregoing instrument was acknowledged before me on this 26 day of June, 2003

  
\_\_\_\_\_  
Dr. Reuben Hertz  
6/26/03  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Notary  
6/24/03  
\_\_\_\_\_  
Date



Ursaline M. Parento  
MY COMMISSION # DD183629 EXPIRES  
February 12, 2007  
BONDED THRU TROY FAIR INSURANCE, INC.